IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WA.No. 1321 of 2007

AGAINST THE ORDER IN WPC.13489/2007 Dated 18/05/2007
.....

APPELLANTS/RESPONDENTS 1 TO 4 IN THE WP(C):
---

1. THE ASSISTANT EXCISE COMMISSIONER,
   KASARAGOD DISTRICT, KASARAGOD.

2. THE CIRCLE INSPECTOR, EXCISE CHECKPOST,
   BANKARA, MANJESWAR, KASARAGOD.

3. THE EXCISE COMMISSIONER,
   COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.

4. THE STATE OF KERALA (REP.BY ITS
   SECRETARY, TAXES DEPARTMENT) SECRETARIAT,
   THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SMT.MEERA

RESPONDENTS/PETITIONER & RESPONDENTS 5 & 6 IN THE WP(C):
---

1. KERALA ROADWAYS LIMITED,
   CORPORATE OFFICE, INDIRA GANDHI ROAD, KOZHIKODE
   REPRESENTED HEREIN BY ITS ERNAKULAM
   BRANCH MANAGER, P.K.ABDUL KHADER.

2. M/S.AVT NATURAL PRODUCTS LIMITED,
   PLOT NO.225/1-A, S.VAZHAKULAM, MARAMPILLY P.O.,
   ALUVA 683 107.

3. M/S.KANKOUR INGREDIENTS LIMITED,
   XVII/138, KANAKKANKADAVU ROAD,
   ANGAMALLY 683573.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

W.A.No.1321 of 2007

Dated, this the 3rd day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal is filed by the State being aggrieved by the interim order passed by the learned Single Judge in W.P.(C) No.13489 of 2007 dated 18th May, 2007. By the impugned order, the learned Single Judge has passed a conditional order for release of the vehicle seized by the authorities under the Abkari Act.

(2) In the writ appeal, the appellants contend that the learned Single Judge should not have released the vehicle without bank guarantee; the vehicle cannot be released unless bank guarantee is offered by the person who is the owner of the vehicle, and lastly, the vehicle is involved in an Abkari offence and therefore liable for confiscation.

(3) The learned Government Pleader appearing for the State would submit that under Rule 4 of the Kerala Abkari (Disposal of Confiscated Articles) Rules, 1996 ('Rules' for short), the cart, vessel or other conveyance liable to be confiscated under the Act, may be released temporarily by the authorised officer to its owner on depositing an amount equivalent to the market value of the cart, vessel or other conveyance, fixed by the Mechanical Engineer of the Excise Department or any Mechanical Engineer of and above the rank of an Assistant Executive Engineer of the Public Works Department of the State, and therefore, according to the learned counsel, the learned Single Judge should

not have passed the interim order for releasing the vehicle on certain conditions.

(4) The vehicle was seized by the appellants in the month of March, 2007. Immediately thereafter, the owner of the vehicle had filed an application before the authorized officer for release of the vehicle. The appellants did not do anything on the application, in the sense, did not pass any order whatsoever. Being left with no other alternative, the owner of the vehicle had to approach this Court for appropriate direction to the appellants in this writ appeal to release the vehicle.

(5) Even after the seizure of the vehicle, the appellants have not taken any effective steps to get the vehicle valued either by the Mechanical Engineer of the Department or any Mechanical Engineer of and above the rank of an Assistant Executive Engineer of the Public Works Department of the State. In a case of this nature, in our opinion, the appellants cannot contend before this Court that the learned Single Judge should not have directed release of the vehicle by accepting a bond for Rs.50,000/- with two solvent sureties for the like sum.

(6) The tardiness on the part of the appellants would disentitle them for any relief in this writ appeal. If they wanted to save the revenue of the State, they should have been more vigilant and that they should have got the vehicle valued by the appropriate authority within a reasonable time. Having not done that, the appellants cannot contend before this Court that the learned Single Judge was not justified in ordering release of the vehicle.

(7) In view of the above, in our opinion, we see no good grounds to

interfere with the interim order passed by the learned Single Judge. Accordingly, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

vns/DK